Fundamental Parental Rights

America's Heritage

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 2/3/11
BILL NO. SJ9

The proposed Parental Rights Amendment will preserve the time-honored principles of parental rights in the actual text of the Constitution, just as the Bill of Rights preserves other fundamental rights.

Section One: The liberty of parents to direct the education and upbringing of their children is a fundamental right.

Section one is rooted in several Supreme Court cases, and without exception:

- *Meyer v. Nebraska* (1923) – "It is the natural duty of the parent to give his children education suitable to their station in life."
- *Pierce v. Society of Sisters* (1925) – "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."
- *Prince v. Commonwealth of Massachusetts* (1944) – "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."
- *Wisconsin v. Yoder* (1972) – "The values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society.... The primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."
- *Moore v. East Cleveland* (1977) – "Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."
- *Santosky v. Kramer* (1982) – "*The fundamental liberty interest of natural parents* in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State" (emphasis added).
- *Washington v. Glucksburg* (1997) – "In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the "liberty" specially protected by the Due Process Clause in cludes the rights...to direct the education and upbringing of one's children."
- *Troxel v. Granville* (2000) – "[T]he interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court....In light of this extensive precedent, it cannot be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions regarding the care, custody, and control of their children."

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Section Two: Neither the United States nor any State shall infringe upon this right without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.

Section two is similarly established by the Supreme Court:

- *Wisconsin v. Yoder* (1972) – "[T]he essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion" [i.e., a fundamental right].
- *Quilloin v. Walcott* (1978) – "We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest."
- *Parham v. J.R.* (1979) – "[H]istorically, it has been recognized that the natural bonds of affection lead parents to act in the best interests of their children.... The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition."
- *Santosky v. Kramer* (1982) – "Until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship."
- *Washington v. Glucksburg* (1997) – "The Fourteenth Amendment forbids the government to infringe...'fundamental' liberty interests of all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."
- *Gonzalez v. O Centro Espirito Benficiente Uniao do Vegetal* (2006) – "The government must "demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person' – the particular claimant whose sincere exercise of [a fundamental right] is being substantially burdened." These sections simply restate the Supreme Court's long-standing rules on the constitutional, fundamental rights of parents.

Section Three: No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.

Section three is designed to protect State family law from intrusive treaties and Customary International Law:

- *Geofroy v. Riggs* (1890) – "The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or its departments, and those arising from the nature of the government itself and of that of the States."
- *Reid v. Covert* (1957) – "To the extent that the United States can validly make treaties, the people and the States have delegated their power to the National Government and the Tenth Amendment is no barrier."

It was not the intent of the writers of our Constitution that domestic law be passed under the treaty power. Section Three of the proposed Parental Rights Amendment merely protects parents and the States from unintended consequences arising from Article VI as it stands in today's international world.

Preserving Liberty

...by protecting long-standing principles of Freedom

The proposed Parental Rights Amendment will preserve the time-honored principles of parental rights in the actual text of the Constitution, just as the Bill of Rights preserves other fundamental rights.

Do you agree with the Supreme Court's traditional standard that parental rights are a fundamental constitutional right?

Sections One and Two of the proposed Parental Rights Amendment do nothing more than place 80 years of Supreme Court precedent into the text of the Constitution.

> Section One says, *"The liberty of parents to direct the education and upbringing of their children is a fundamental right."* This is rooted in several Supreme Court cases – especially *Meyer v. Nebraska* (1923), *Pierce v. Society of Sisters* (1925), and *Troxel v. Granville* (2000) – and it is without exception in precedent. (See attachment for quotes.)
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> Section Two says, *"Neither the United States nor any State shall infringe upon this right without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served."* This is similarly established by the Supreme Court, especially in *Wisconsin v. Yoder* (1972) and *Gonzalez v. O Centro Espirito Benficiente Uniao do Vegetal* (2006). This language has been used in more than 120 federal cases to define the "strict scrutiny" test required to limit a fundamental right. (See attachment.)

Do you agree that it is valid to put into the text of the Constitution those rights that run the risk of being eroded in the near future?

This is exactly the reasoning and wisdom behind the inclusion of the Bill of Rights in 1791. Today, parental rights are at risk as well.

Domestic concerns:

- In *Troxel v. Granville* (2000), the Supreme Court issued a fragmented six-way decision in which only Justice Thomas used the "strict scrutiny" test to reach his decision.
- Justice Scalia held that because parental rights are 'implied rights,' they are not afforded judicial protection at all.
- In the wake of this confusion, lower courts routinely fail to accord to parental rights the same high legal standard applied to other fundamental rights.
- There exists the real possibility that the next parental rights case to reach the Supreme Court could result in a decision even further removed from our heritage of protecting these liberties.

International concerns:

If ratified, the proposed UN Convention on the Rights of the Child (CRC) would override all state law in the area of family law, based on Article VI of our Constitution (the Supremacy Clause). Since nearly all U.S. family law is state law, this would constitute a massive power shift from the state to the federal level, ultimately under the authority of a U.N. committee.

More importantly, the entire tradition of fundamental rights outlined above would be over-turned for a system where government is *obligated* to interfere in any family decision in order to ensure "the best interest of the child."

'Implied rights,' such as those found to be implied in the Fourteenth Amendment, would not hold up to a ratified treaty. ("The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints *which are found in that instrument* against the action of the government or its departments, and those arising from the nature of the government itself and of that of the States." – *Geofroy v. Riggs* (1890), emphasis added.)

Even if this treaty is defeated now, it or another like it can be brought up at any time for ratification. Only Section Three of the proposed Amendment permanently removes this threat to fundamental parental rights.

Many judges in federal and state courts already cite "customary international law" to justify applying international standards to domestic cases. This allows our nation to be bound by the CRC even if we don't ratify it.

Section Three says, *"No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article."* This addresses these international concerns in the text of the Constitution, the only means of protecting State sovereignty and parental rights from activist judges and an over-reaching use of the federal treaty power.

Do you agree it will be wiser to protect parental rights in the early stages of erosion than to wait until they're "on the brink"?

We cannot afford to wait until parental rights are being violated on a wide scale before we protect them. We must exercise the foresight of our forefathers by protecting these rights and our sovereignty now!

"Liberty once lost is lost forever."

-President John Adams

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